

Roy E. Crabtree, Ph.D.
Regional Administrator, Southeast Region
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, FL 33701-5505

Dear Dr. Crabtree:

As you may know, multiple federal agencies responsible for permitting or authorizing offshore aquaculture activities in federal waters of the Gulf of Mexico have entered into an interagency Memorandum of Understanding (MOU).¹ The purpose of this MOU is to provide a regulatory process that will provide protection for the ocean environment and facilitate efficient coordination, consistency, and transparency amongst federal agencies when making permitting and authorization decisions related to aquaculture.

The U.S. Environmental Protection Agency Region 4 (EPA) is processing a National Pollutant Discharge Elimination System (NPDES) permit application for an offshore aquaculture operation in federal waters of the Gulf of Mexico operated by Kampachi Farms, LLC.² Until recently, the EPA has been working as a Cooperating Agency with the National Marine Fisheries Service (NMFS) to develop an Environmental Assessment (EA) to support the issuance of the NPDES permit in order to comply with the requirements of the National Environmental Policy Act (NEPA) under 40 Code of Federal Regulations (CFR) Part 6.³ On September 25, 2018, a U.S. District Court ruled that the NMFS did not have the authority to create a new regulatory permitting scheme for aquaculture operations under the Magnusson Stevenson Act.⁴ In light of this recent court decision, the EPA will now serve as the “Lead Agency” for preparation of the EA pursuant to 40 CFR § 1501.5. The EPA will work with all Cooperating Agencies to jointly create a comprehensive NEPA analysis in an efficient and timely manner.

The purpose of this letter is to request that the NMFS participate as a “Cooperating Agency” in the development of the EA. The MOU and Council on Environmental Quality’s regulations at 40 CFR § 1501.6 emphasize agency cooperation in the NEPA process between Federal agencies either having jurisdiction or special expertise related to a proposed action. Participation by the NMFS as a Cooperating Agency would ensure that pertinent NMFS legislative authorities, implementing regulations, policies, and concerns are included and considered in the EA.

¹ On February 6, 2017, the Memorandum of Understanding (MOU) for Permitting Offshore Aquaculture Activities in Federal Waters of the Gulf of Mexico became effective for seven federal agencies with permitting or authorization responsibilities.

² Kampachi Farms, LLC is proposing a pilot-scale net-pen aquaculture facility within federal waters of the Gulf of Mexico located in approximately 45 miles west-southwest of Sarasota, Florida.

³ On January 16, 2018, the EPA entered into a cooperating agency agreement with the NMFS for development of an EA to support all federal permits needed for the Kampachi Farms, LLC proposed project.

⁴ *Gulf Fishermen’s Association et al. v. National Marine Fisheries Service et al.*, Case 2:16-cv-01271-JTM-KWR Document 94 (9/25/18)

Please provide a written response accepting or declining the EPA's invitation to be a cooperating agency within 30 days of the date of this letter and identify your agency's point of contact. The EPA NEPA project manager and primary contact for this EA will be Mr. Dan Holliman. If you have any questions related to this request or the proposed project, please contact Mr. Dan Holliman (404-562-9531 or [[HYPERLINK "mailto:Holliman.Daniel@epa.gov" \]](mailto:Holliman.Daniel@epa.gov)).

Sincerely,

Christopher A. Militscher, Chief
NEPA Program Office
Resource Conservation and Restoration Division

cc: Jess Beck-Stimpert, NMFS, *via email*
Katy Damico, U.S. Army Corp of Engineers, *via email*
Dr. Catherine Phillips, U.S. Fish and Wildlife Services, *via email*
Mr. Bill Pearson, U.S. Fish and Wildlife Service, *via email*